82-888

Office - Supreme Court, U.S.
FILED
NOV 22 1982
ALEXANDER L. STEVAS,
CLERK

No:_____

UNITED STATES SUPREME COURT

October Term, 1982

DR. JACQUELINE S. HART,
Plaintiff-Appellant

versus

THE UNIVERISITY OF TEXAS, HOUSTON, M.D. ANDERSON HOSPITAL and TUMOR INSTITUTE, ET AL,
Defendants-Appellees

APPEAL FROM THE FIFTH CIRCUIT COURT OF APPEALS

APPLICATION FOR WRIT OF CERTIORARI

W. Patrick Resen, Esquire
Attorney at Law
2001 Salvio Street, Suite 13
Concord, California 94520
(415) 682-9102

QUESTIONS PRESENTED

I.

WHETHER APPELLANT ESTABLISHED A PRIMA FACIE CASE OF DISCRIMINATION.

II.

ASSUMING THAT APPELLANT ESTABLISHED A PRIMA FACIE CASE OF DISCRIMINATION, DID APPELLEES REBUT THE PRESUMPTION OF AN UNLAWFUL DISCRIMINATION.

I.

PARTIES

APPELLANT:

DR. JACQUELINE S. HART

APPELLEES:

UNIVERSITY OF TEXAS AT HOUSTON

M.D. ANDERSON HOSPITAL AND TUMOR INSTITUTE

II.

JURISDICTION

Appeal of Judgment from United States Court Of Appeals For the Fifth Circuit.

III.

REFERENCE TO OPINION

1) United States District Court For The Southern District of Texas, Houston Division; Civil Action Number H-79-915; Judgment Entered March 30, 1981.

2) United States Court Of Appeals For The Fifth Circuit; Number 81-2156; Judgment Entered August 23, 1982.

IV.

STATEMENT OF THE CASE

This matter proceeds from Appellant's Title VII action, contending that Appellees unlawfully denied her promotion in employment as a research scientist based on sexual

discrimination. The denial of promotion effectively terminated her employment under the terms of the position established by Appellees.

Appellant's position with Appellee was as a cancer research scientist, and Assistant Professor of Medicine. Her duties included patient care, research, teaching, and the typically associated academic committees, societies, and review groups.

Appellant developed original research methods (protocols) receiving recognition from her peers for her basic research work, and publication of the same. Appellees acknowledged her work, and incorporated the same into their own research projects. Despite Appellant's performance and work product, Appellee's review committee did not recommend her promotion. Having not been promoted,

Appellant's position of employment terminated, and her only recourse with Appellees was a terminal one year assignment.

Appellant contentions are that particular administrators of Appellees intentionally sought to mimimize her contribution(s), and instead depriciated her value to the educational institution, and its programs. These intentional acts and conduct direct resulted from personal motivation to discriminate against Appellant as a female member of the staff.

Further, that by discriminating against Appellant, and causing her termination from the staff, Appellant's research projects thereafter became Appellee's property. In essence, by insuring Appellant's employment failure, Appellees gained control over Appellant's

research and adopted the same as their own without professional credit to Appellant.

Appellant clearly set forth these contentions by a preponderance of the evidence at Trial, and the burden therefore fell upon Appellees to rebutt the presumption of an unlawful discrimination. Appellees have not met any part of its burden in this regard, and thus Appellant's case must be upheld as a matter of law, or the case returned to the District Court for a further hearing on the issue of fact.



W PATRICK RESEN
Attorney for Petitioner